

§ 58-8-20. Mutual companies with a guaranty capital.

(a) A mutual insurance company formed as provided in Articles 1 through 64 of this Chapter, in lieu of the contributed surplus required for the organization of mutual companies under the provisions of G.S. 58-7-75, or a mutual insurance company now existing, may, with the prior approval of the Commissioner, tender a guaranty capital offering of not less than fifty thousand dollars (\$50,000), divided into units of one hundred dollars (\$100.00) each, which shall be invested in the same manner as is provided in this Chapter for the investment of the capital stock of insurance companies.

(a1) Guaranty capital may be issued by an existing domestic mutual insurance company only under the following terms and conditions:

- (1) To aid and assist a financially troubled domestic mutual insurance company which otherwise faces rehabilitation or liquidation by this Department; or
- (2) For any other reason as presented in a petition to the Commissioner and which is found by the Commissioner to be reasonable, justifiable, and in the best interest of all the policyholders of the company.

Guaranty capital issued under subdivision (2) of this subsection shall require written notification of the action proposed by the board of directors of the company to be mailed to the policyholders of the company not less than 30 days before the meeting when the action may be taken. The written notification shall be advertised in two newspapers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. The proposed action shall be effected by a vote of two-thirds of the policyholders voting thereon in person or by proxy.

(b) The board of directors of a company may distribute interest to the holders of guaranty capital in accordance with the guaranty capital filing approved by the Department.

(c) Guaranty capital shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment.

(d) Guaranty capital holders are entitled to one vote per unit of guaranty capital. Guaranty capital holders who are not policyholders are not entitled to participate in the policyholder votes prescribed under subdivision (a1)(2) and subsection (e) of this section.

(e) Guaranty capital may be reduced or retired by vote of the policyholders of the company and the assent of the Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five percent (25%) of the guaranty capital. Written notice of the proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. An affirmative vote of at least two-thirds of the policyholders voting in person or by proxy is required to adopt the proposed action.

(f) No insurance company with guaranty capital shall distribute to its holders of guaranty capital its assets, except as provided in the guaranty capital filing as approved by the Commissioner.

(g) In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the holders of guaranty capital to the extent that the guaranty capital has been contributed together with accrued interest as specified in the filing approved by the Commissioner. (1899, c. 54, s. 34; Rev., s. 4740; 1911, c. 196, s. 3; C.S., s. 6350; 1945, c. 386; 1971, c. 752; 1981, c. 723; 1989, c. 320; 1991, c. 720, s. 10; 1993, c. 452, s. 17; 2003-212, s. 15; 2005-215, s. 26.)